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MONTANA LEGISLATIVE HISTORY

Chapter 484 19 91

Bill H 252 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Business & Industry		
Hearing Date(s)	Jan 29	✓ C	Hearing Date(s)	Mar 09	✓ C
	Feb 02	✓ C		Mar 21	✓ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	Feb 04	✓ C		Mar 21	___ ✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

4/10	3RD READING AMENDMENTS CONCURRED	96	0
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/15	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 465	EFFECTIVE DATE: 4/17/91	

HB 252 INTRODUCED BY FORRESTER, ET AL.
ALLOW 45 DAYS TO GIVE NOTICE OF RIGHT TO CLAIM CONSTRUCTION LIEN

1/18	INTRODUCED		
1/18	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/18	FIRST READING		
1/21	REREFERRED TO JUDICIARY		
1/29	HEARING		
2/04	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/07	2ND READING PASSED AS AMENDED	95	5
2/09	3RD READING PASSED	88	6
	TRANSMITTED TO SENATE		
2/11	FIRST READING		
2/11	REFERRED TO BUSINESS & INDUSTRY		
3/07	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/26	2ND READING CONCURRED AS AMENDED	35	14
3/27	3RD READING CONCURRED	35	15
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	95	3
4/10	3RD READING AMENDMENTS CONCURRED	95	4
4/15	SIGNED BY SPEAKER		
4/16	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 484	EFFECTIVE DATE: 4/20/91	

HB 253 INTRODUCED BY SIMPKINS
REMOVE LANGUAGE GRANTING SUPERVISION OF SCHOOLS TO SUPERINTENDENT OF OPI

1/18	INTRODUCED		
1/18	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/18	FIRST READING		
1/28	HEARING		
2/01	COMMITTEE REPORT—BILL NOT PASSED		
2/02	ADVERSE COMMITTEE REPORT ADOPTED	53	40

HB 254 INTRODUCED BY SIMPKINS
CLARIFY DEFINITIONS OF ENROLLED AND ATTENDANCES FOR SCHOOL LAW PURPOSES

1/18	INTRODUCED
1/18	REFERRED TO EDUCATION & CULTURAL RESOURCES
1/18	FIRST READING
1/28	HEARING
1/30	TABLED IN COMMITTEE

HB 255 INTRODUCED BY GILBERT, ET AL.
ALLOW RAFFLE OF CERTAIN HUNTING LICENSES
BY REQUEST OF DEPARTMENT OF FISH, WILDLIFE, & PARKS

1/18	INTRODUCED
1/18	REFERRED TO FISH & GAME
1/18	FISCAL NOTE REQUESTED
1/18	FIRST READING
1/24	FISCAL NOTE RECEIVED

HOUSE BILL NO. 252

INTRODUCED BY FORRESTER, QUILICI, WILLIAMS, T. BECK, DRISCOLL, SCOTT, LYNCH, DOHERTY

IN THE HOUSE

JANUARY 18, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
JANUARY 21, 1991	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 4, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 5, 1991	PRINTING REPORT.
FEBRUARY 6, 1991	ON MOTION, CONSIDERATION PASSED.
FEBRUARY 7, 1991	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 8, 1991	ENGROSSING REPORT.
FEBRUARY 9, 1991	THIRD READING, PASSED. AYES, 88; NOES, 6.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
MARCH 21, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 22, 1991	ON MOTION, CONSIDERATION PASSED UNTIL THE 63RD LEGISLATIVE DAY.
MARCH 23, 1991	ON MOTION, CONSIDERATION PASSED UNTIL THE 64TH LEGISLATIVE DAY.
MARCH 26, 1991	SECOND READING, CONCURRED IN AS AMENDED.

MARCH 27, 1991	THIRD READING, CONCURRED IN. AYES, 35; NOES, 15.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 17, 1991	RECEIVED FROM SENATE.
APRIL 8, 1991	ON MOTION, CONSIDERATION PASSED.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 10, 1991	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 252

INTRODUCED BY Forester, Lynch, Dorty

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CONSTRUCTION LIEN LAW; ALLOWING 45 DAYS TO GIVE NOTICE OF THE RIGHT TO CLAIM A CONSTRUCTION LIEN; AMENDING SECTIONS 71-3-531 AND 71-3-532, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-3-531, MCA, is amended to read:

"71-3-531. **Notice of right to claim a lien required -- exceptions.** (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) a person who furnishes services or materials directly to the owner at his request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of his right to claim a lien to the contracting owner in order to claim a lien.

(3) This notice must be given no later than ~~20~~ 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the ~~20-day~~ 45-day period before the date on which notice is given.

(4) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to him. Notice by certified mail is effective on the date the notice is mailed.

(5) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy must be filed no later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. ~~Such~~ The notice lapses upon the

INTRODUCED BILL
HB 252

expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

(c) The continuation statement must include:

(i) the clerk and recorder's file number of the notice;

(ii) the date on which the notice originally was filed; and

(iii) the name of the person to whom the original notice was given.

(d) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time he files his lien.

(6) At the request of any subcontractor or material supplier who may claim a lien through him, a person shall furnish to the requestor within 5 business days:

(a) a description ~~of~~ sufficient to identify the real estate being improved~~, sufficient to identify it~~; and

(b) the name and address of the contracting owner."

Section 2. Section 71-3-532, MCA, is amended to read:

"71-3-532. Content of notice of right to claim a lien.

(1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information and be in substantially the following form:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To:..... Date of mailing: .....

(Owner)

.....

(Owner's address)

This is to inform you that ..... has begun to provide ..... (description of services or materials) ordered by ..... for improvements to property you own. The property is located at .....

A lien may be claimed for all services and materials furnished to you~~,~~ if this notice is given to you within ~~20~~ 45 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the

services or materials furnished within the ~~20-day~~ 45-day period before the date on which the notice is given.

Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid. THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

This notice has been sent to you by:

NAME:..... IF YOU HAVE ANY QUESTIONS

ADDRESS:..... ABOUT THIS NOTICE, PLEASE

TELEPHONE:..... CALL US

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to claim a lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

-- RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

-- LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

-- WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to claim a lien.

-- OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to claim a lien have been paid or have waived the right to claim a lien against your property.

-- CONSULT an attorney, a professional escrow company, or your mortgage lender."

NEW SECTION. **Section 3.** Saving clause. [This act] does not affect rights and duties that matured, penalties that

were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 4.** **Effective date.** [This act] is effective on passage and approval.

-End-

Collette Bumgardner, self, stated the peeping bill deals with a very serious offense. She told the committee of an experience that happened to her in regard to a peeping tom. This experience left her frightened, not sleeping at night, and an experience she will never forget. This is a very serious offense and would ask the committee for a do pass on this bill.

Diane Sands, Montana Women's Lobby, stated they support this bill and ask the committee to give it a do pass.

Opponents' Testimony: none

Questions From Committee Members:

REP. TOOLE asked Ms. Wing if the offense is committed by anyone crossing the property line, not just for someone out in the yard? Ms. Wing said yes, as long as they are looking into the building.

REP. TOOLE asked John Conner if we should have this penalties for this crime be the same as the other two bills accompanying this bill? Mr. Conner the reason we did not put any penalty for 2nd and 3rd offense is because we were creating a new offense with this bill.

Closing by Sponsor:

REP. COCCHIARELLA stated she hopes the committee will give a do pass these bills as a package. This will help prevent further continuation of these kinds of violence and terrorism against mostly women and children in our society. A letter from the office of the City Attorney is for the record. EXHIBIT 8

HEARING ON HB #252
ALLOWING 45 DAYS FOR NOTICE OF RIGHT TO CLAIM CONSTRUCTION LIEN

Presentation and Opening Statement by Sponsor:

REP. FORRESTER, HOUSE DISTRICT 98, this bill concerns the construction industry. It deals with the number of days required to enforce the intent to lien. We want to change the number of days from 20 to 45 days.

Proponents' Testimony:

J. Riley Johnson, Western Building Material Association, gave written testimony in favor of HB #252. EXHIBIT 9

Don Chance, Montana Building Industry Association, this bill is extremely important to our industry. I urge the support of this bill.

Gene Phillips, Montana Land Title Association, stated we are providing an amendment to the bill for page 3 line 18. We suggest you insert a sub paragraph e that would read "the notice may be released from the public record by filing a release of notice of right to file a lien with the clerk and recorder". We urge do pass of this bill.

Mark Lindsey, General Contractor, stated he is in support of HB #252. He is very aware of the problem of 20 days and feels 45 days would solve many public relation problems.

William Madison, Johnson-Madison Lumber Company, gave written testimony in favor of HB 252. EXHIBIT 10

Nep A. Lynch Jr., V.P.-Intermountain Lumber, gave written testimony in favor of HB 252. EXHIBIT 11

Tom Simpkins, Lumber Yard Owner - Bozeman, stated he has given out as many notices as anybody. We send around three to four hundred of these a year. The basic cost of sending these out is $3600 for your basic filing cost and doesn't include the time. Sometimes 20 days becomes a bit tight because it may take us a week or 15 days to process the information and we are dealing with several counties. Another problem I have had is a public relations problem. Contractors refuse to do business with us because we send out pre-lien notices. We are asking to change the deadline to 45 days. EXHIBIT 12

Milo L. Stordahl, President - Triple "S" Building Center, Inc., gave written testimony in favor or HB 252. EXHIBIT 13

Jim Caras, Missoula Homebuilders Association, stated the way the existing lien law works it is very hard to be a supplier. I have time again where the contractors will tell us we do not want to business with you if you file a lien. Filing a lien is our safeguard and we are in support of the 45 days.

Keith Albright, Home Owners Association, stated we are in support of this bill right now. Filing a lien is not a cure all and a lien is a method of last resort.

Mark Meed, Helena Home Builders, stated we strongly support this bill for the reasons presented.

David Steen, Great Falls Homebuilders, stated we are in support of HB #252.

Paul E Thomas, self, I support this bill.

Opponents' Testimony:

Bill Leary, Montana Bankers Association, gave written testimony opposing HB #252. EXHIBIT 14

George Bennett, Montana Bankers Association, stated a lien is a safeguard for the home buyer. He is opposed to changing the 20 days to 45 days.

Jock Anderson, Montana League of Savings and Loan, stated we oppose this bill. It seem the testimony has lost sight of the fact that the purpose of this notice if not just to fulfill a technical requirement. The purpose was to give homeowners the knowledge they might need to protect themselves.

John R. Gordon, attorney, gave written testimony opposing HB #252. **EXHIBIT 15**

Bob Pyfer, Montana Credit Unions League, stated the lien law is a good law that provides a warning to the consumer that there might be a lien out there they might not be aware of and also provides good clean language, instructions and guidance on how to protect themselves. Primarily through issuing joint checks. We feel 20 days is ample time and if anything is too long. Changing it to 45 days would remove a lot of protection for that consumer.

Mike Varone, Vice President - Norwest Bank, stated he agrees with the testimony of the opponents today. This is an anti-consumer bill that will allow the consumer to pay twice. It is the duty of the contractor to inform perspective homeowner of what he will be receiving in the mail to protect himself. This is a self-serving bill and does not protect the homeowner it protects the contractor and they should be able to be aware of who they are dealing with. Presently, banks are in the credit business. If the contractors and client want to be in the credit business, let them beware and give them notice.

Joe Bower, First Bank, stated he opposes HB #252. This bill is not in the homeowners or consumers interest and there is protection to the contractor and supplier in the existing law. This bill could delay closing on Real Estate Loans. We ask you to do not pass this bill.

Questions From Committee Members:

REP. TOOLE asked **Mr. Johnson** if the additional 25 days will be keeping the homeowner in the dark too long in regard to liens that may be filed against them? **Mr. Johnson** said everyone here has stated they have heard the horror stories of double payments. The fact is the law is working at this time, and we are asking for an additional 25 days before placing the notice. We do not feel we are going to harm the homeowner.

REP. WHALEN asked **Mr. Johnson** when the consumer is dealing with the General Contractor are they somehow bonded? **Mr. Johnson** said he could not answer that.

REP. JOHNSON asked **Mr. Lindsey** would it be possible for you to sit down with whoever you are doing work for, and explain and

show them copy of the notice of right to file the lien at that particular moment? **Mr. Lindsey** said he did try to do that and he brought out the form to inform the client what will be coming in the mail. But they seem to forget over the course of 4 or 5 months and then panic when it does come in the mail.

Closing by Sponsor:

REP. FORRESTER stated this bill is a consumer protection bill and that the problem with the banking industry seems to be in terms of property. I do not think the banks are concerned about consumer protection this time. I ask that you do pass this bill.

ADJOURNMENT

Adjournment: 11:47 a.m.

BIDL STRIZICH, Chair

JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE Jan. 29, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓	✓	
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓	✓	
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓	✓	
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓	✓	
REP. TIM WHALEN	✓	✓	
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

DATE 1-29-91
HB 252

SUBMITTED STATEMENT OF

WESTERN BUILDING MATERIAL ASSOCIATION

Before: Judiciary Committee, Montana House of Representatives
Rep. Bill Strizich, Chairman

Subject: HB-252

Date: January 29, 1991

Presented By: J. Riley Johnson

Mr. Chairman, members of the committee, I offer the following testimony on behalf of some 90 building material dealers in Montana who belong to the Western Building Material Association. Our members support HB-252.

As I look over the committee this morning, I realize there are many here totally unfamiliar with the construction lien law. To most the lien law is merely 71-3-531 and 71-3-532 MCA. But to me the lien law is a labor of love. Permit me to provide you with a little history on one of the most unusual bills ever passed in the 1980s in the Montana Legislature.

It began in 1985 when several legislators, the banking community and consumer advocates brought before the lawmakers a problem that was called "the hidden lien". Consumers, unaware of the construction lien laws dating back to the 1880s, paid for construction jobs on their homes only to have subcontractors and suppliers file liens against their property for bills unpaid by their contractors. These "hidden liens" could pop up months

after the job was completed and paid off by the consumer. These consumers had no choice...they paid the liens and thereby, in some cases, paid for their jobs twice. To alleviate this "hidden lien" problem, a so-called model construction lien law, drafted by a national uniform code committee, was offered to the legislators. The construction industry found this uniform code unacceptable. The banking community and consumer groups liked the uniform code. Thanks to a very trusting Senate Judiciary Committee, chaired by Sen. Joe Mazurek, the proponents and opponents asked for and were given the charge to "get our industries and special interests together and come up with a better idea that will work". In essence, we asked for the opportunity to solve our own problems and not ask a group of legislators to do our work for us. We had two years. The lawmakers appointed an interim committee chaired by Sen. Mike Halligan to assist the special interest groups in finding an acceptable solution to the "hidden lien" problem.

Two years later, the interim committee, the construction industry, the banking community, and consumer-oriented interests were back before the same Judiciary Committee. We had a plan. Prefaced by accolades on the floor of the Senate for the first time in recent memory that diverse industries and special interests got together and solve their own problems, the construction lien law as you know it today sailed through both houses of the 1987 Legislature almost unanimously.

Ex 9
1-29-91
HB 252

And, now, for four years the construction lien law has been at work in Montana. Indeed, it is a political compromise. But it is one political compromise that has worked well. Hidden liens against consumers have all but been eliminated.

Truly, the authors of that very lien law are before you again this morning. We come before you not to overhaul a very workable construction lien law. We come before you to fine-tune a very workable construction lien law. And, we believe, it is a fine-tuning any one of you who have ever paid a bill at the end of the month or issued a monthly statement will understand.

If you think about it, the problem is obvious. The law now states that any contractor or supplier has 20 days in which to file a notice of the right to file a lien, or that contractor or supplier must give up the right to file a lien...forever! Keep in mind, this is merely a notice <u>of the right to file a lien</u>. It is <u>NOT</u> a lien! But you, a good, prompt bill-paying consumer, must get this notice of the right to file a lien against your house before your contractor has even had 30 days to pay his/her bills. What runs through your mind? Something is wrong with your contractor, isn't there? He doesn't pay his or her bills, right? What about the suppliers to contractors who don't want to be viewed as "slip-shod" and "irresponsible"? Contractors won't do business with them.

Okay, we have a problem...but it is a very simple one to correct. Let's allow folks a <u>full billing cycle</u> before they have to file the notice of the right to lien. And, in most businesses today, a full billing cycle is 30 days to billing and 10 days to

pay. If our client has not paid with that 40-day period, we have five (5) days in which to get up to the courthouse and file our right to file a lien and notify the consumer.

That's fair!

That is why we are asking you merely to amend the present construction lien law to allow 45 days to file a notice, rather than the existing 20 days.

As you know, any major rewrite of law needs time to work out glitches or to have any imperfections rise to the surface. Then, it is customary for lawmakers to fine-tune the law and make it work better for the people of Montana.

That is what we are asking for you to do today.

Speaking for the construction industry, we gave up much with this new construction lien law...but we also gained much. A problem within our state was solved and our industry worked hard and willingly to help craft that solution.

But we suggest that a "do pass" from this committee on HB-252 will help us all to fine-tune that solution...<u>because it is fair</u>!

William L Madison

W Larry Madison

EXHIBIT 10
DATE 1-29-91
HB 252

Johnson-Madison LUMBER Company, Inc
BUILDING MATERIALS & HARDWARE
P. O. BOX 2372 • 815 - 9TH STREET NORTH • GREAT FALLS, MONTANA 59403

Phone 771-0222

Established Since 1923

January 28, 1991

House Judiciary Committee
Bill Strizich, Chairman
Capital Building
Helena, MT 59601

To whom it may concern;

I am one of many retail suppliers that has a great concern about our lien laws. The proposed changes in our lien laws need strong support. The following are examples of why our current lien laws need immediate change:

1. There is not enough time to get through a billing cycle. Almost all suppliers, including my business, set up 30 day accounts for their customers. With the present lien law it is already too late to file a lien when the first statement is mailed, also it is at least 15 days later before I realize there is a delinquency.

2. With the numerous accounts I deal with, it would be a full time job to send "notice of right to claim a lien" to my customers' clients and then to the clerk and recorders, in addition to the recording costs.

3. The "notice of right to claim a lien" is misleading to my customers as well as his clients. The impression is given upon receipt of the notice that my customer is incompetent in handling his accounts with me and that he doesn't pay his bills which also leads to question the integrity of his work. Therefore, the client is leery of doing business with my customer. It has hurt my customers relations to the point where I don't feel comfortable sending the notice at this time. I have lost some good accounts because we were going to file notices of right to claim a lien.

In conclusion, the proposed change to 45 days would be a reasonable amount of time, both for the public and the supplier to evaluate delinquencies. My customer would be able to advise me if he was starting to anticipate a problem with payment from the client and we would be able to work together to solve the problem. It would also eliminate, in most cases, the need to send the "notice of right to claim a lien" thus minimizing the confusion we are presently experiencing with our customer and his client.

Sincerely,

William L Madison

EXHIBIT 11
DATE 1-29-91
HB 252

INTERMOUNTAIN LUMBER
AND BUILDING SUPPLY

The Lumber People

January 23, 1991

RE/ HB - 252 Construction Lien Law

I support a 45 day waiting period to file a right to claim a construction lien.

Because, we offer a 5% discount if paid by the 10th, accounts are flagged if they do not pay in this time period. A right to file could then be filed.

Most of our customers are offended when we in fact file in the 20 day period. It becomes very time consuming to file on customers you know are good, and hard to explain to our customers clientele that in fact we really trust him. But this is just for insurance.

Sincerely,

Nep A. Lynch Jr.
V.P. Intermountain Lumber

EXHIBIT 12
DATE 1-29-91
HB 252

Simkins-Hallin Lumber Co.
PO Box 939
Bozeman, MT 59715

Dear _____:

We would like to take this opportunity to extend your CONGRATULATIONS to you on the new building project that you are constructing at _____ and let you know that we have begun to furnish materials for use in your project.

This notice is required by the new construction lien law of Montana that became effective October 1, 1987, and is not intended to discredit you or your contractor in any way, but to inform you that if payment is not received according to agreement, a lien may be filed.

We do hope that you will be pleased with the materials we are furnishing and hope that we may be of further service to you in the future.

Should you have any questions regarding this notice, please feel free to contact the undersigned:

Simkins-Hallin Lumber Co.
PO Box 939
Bozeman, MT 59715
406-586-5495

Sincerely,

Tom Simkins

cc

EXHIBIT 13
DATE 1-29-91
HB 252

TRIPLE 'S' BUILDING CENTER, INC.

100 E. FRONT STREET
P. O. BOX 3764
BUTTE, MT 59702

HOW-TO STORE

The Stordahls

(406) 723-6567 PHONE
(406) 723-7304 FAX
(800) 823-8777 IN STATE WATS

January 28, 1991

Riley Johnson
(406) 442-2107 FAX

RE: HB252 Amendment to Construction Lien Law

Dear Riley Johnson:

Sorry I cannot be in Helena to personally testify for changing the current twenty (20) day notice on the lien law to forty five (45) days.

The present twenty day law has caused us file many "Intent to File a Lien" notices against consumers whose contractors pay thier bills every thirty (30) days. Changing the law would decrease the paper work involved for both us and the county.

Sincerely,

Milo L. Stordahl
President

EXHIBIT 14
DATE 1-29-91
HB 252

HOUSE BILL 252

CONSTRUCTION LIEN LAW

By

Montana Bankers Association

The old mechanics lien law was in a mess and had not been changed for 100 years. A group of local bankers, builders, attorneys, and legislators in Kalispell met in the fall of 1984 and approved the uniform law on construction liens. In the 1985 Legislature, this became SB 128 sponsored by Senators Himsl, Mazurek, Blaylock and Crippen.

The home builders and building material dealers killed the bill because it took away their 90 day secret lien and made many other changes.

The '85 Legislature passed a resolution creating a Joint Interim Subcommittee on Lien Laws, Chaired by Senator Halligan and Vice Chair Rep. Mercer. Other committee members were: Senator Hager, Christiens, Thayer, and Reps. Ellerd, Bachini, and Krueger.

At the third meeting of the Interim Committee on February 7, 1986, Riley Johnson, lobbying for the home builders, requested the time to give notice of a lien be increased from 10 days to 20 days. It was approved over MBA's objections.

After 7 meetings over 2 years, a modified uniform code was approved. Everyone agreed to the compromise and SB 20 was introduced by Senators Halligan, Thayer, Boylen, Gage and Reps. Poulson, Mercer, Hager, Rasmussen, Wallin, and D. Brown.

The first thing the home builders and building material

dealers sought was an amendment to the bill to extend their filing time by another 5 business days. With weekends, builders and suppliers would then have almost a 30 day secret lien. We supported a 15 day notice to the homeowner and an additional 5 days to file with the county, to no avail. The bill passed in the 1987 Legislature.

This law has worked extremely well since 1987. To our knowledge no homeowner has been forced to pay twice for any home improvements. Prior to 1987, Legislators were coming to the session complaining about their constituents who were forced to pay twice because either the subcontractor did not get paid by the contractor or the building material dealer did not get paid by the contractor, etc. Since then the homeowner has been protected.

There is also protection for the contractors and suppliers because they still have a secret lien. The homeowner can still be forced to pay twice if a notice of lien is given to that homeowner within 20 days. Obviously builders and suppliers do not want to go through the paperwork of providing notices like all banks have to do to protect themselves. If they do not wish to do the paper work, they are putting themselves at risk and justifiably so. They are the ones that are making money off home improvements. Why should the homeowner guarantee the accounts receivable of a building material dealer or the repair costs of a subcontractor?

Rest assured if this time is extended to 45 days, you will be back in 1993 to reduce the time of notice because someone will have had to pay twice for a home improvement job. MBA urges you to kill HB 252.

EXHIBIT 15
DATE 1-29-91
HB 252

WITNESS STATEMENT

NAME JOHN R. GORDON BILL NO. H.B. 252

ADDRESS P.O. Box 728 KALISPELL, MT. DATE 1/29/91

WHOM DO YOU REPRESENT? ATTORNEY INTERESTED.

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: SEE ATTACHED LETTER

Ex. 15
1-29-91
HB 252

LAW OFFICES OF

MURRAY & KAUFMAN, P.C.

MARSHALL MURRAY
LEONARD L. KAUFMAN
JAMES E. VIDAL
JOHN R. GORDON
DANIEL W. HILEMAN
JAMES M. RAMLOW
JEROME S. KNUTSON
DAVID A. HAWKINS

SECOND WEST CENTRE
P.O. BOX 728
KALISPELL, MONTANA 59903-0728

TELEPHONE
406-755-5700
FAX
406-755-5565

January 27, 1991

Chairman
House Judiciary Committee
Montana House of Representatives
State Capitol
Helena, MT 59601

RE: H.B. 252 amending the Construction Lien Law

Dear Mr. Chairman and Members of the Committee:

Thank you for permitting me to testify in this manner. I apologize for my inability to be present in person.

Members of the committee may recall that I was personally and intensively involved with the revision of the Montana mechanic's lien law during the 49th and 50th Legislatures. I also actively participated in the studies of the Joint Interim Subcommittee on Lien Laws created by the 49th Legislature which resulted in the Montana Construction Lien Law passed by the 50th Legislature.

Members of this committee will also recall that a principal reason, if not the sole motivation for revising the century old mechanic's lien law was to eliminate the "secret lien" which had become grossly unfair and unconscionable to Montana's homeowners. Abuse of the mechanic's lien had forced many, many homeowners to pay two and three times for the same work on their property. This was because oftentimes the lien claimants could not be identified until long after the work had been completed; sometimes not until a year afterwards.

The 1987 Construction Lien Law was designed to eliminate the secret lien. This was accomplished by requiring a lien claimant to notify the homeowner of his intent to claim a lien within 20 days after he started supplying labor or material to the project. A lien claimant was not denied his lien if he gave the notice later than 20 days, but his lien was limited to labor and materials supplied within 20 days of the notice, whenever given. The 20-day notice mechanism was in fact proposed by the construction and materialmen.

If the Construction Lien Law is amended as proposed by HB 252, we will be back to the old secret lien. A lien claimant will be able to sit in the weeds and not file his lien for 45 days after he furnishes material or labor. There will be no way for the homeowner to discover the lien until then.

Ex. 15
1-29-91
HB 252

There is no justification for extending the time from 20 days to 45 days (20 days may even be too long.) If a lien claimant cannot decide whether he intends to depend on the credit of the contractor or the homeowner at the time he supplies the goods or labor, he should suffer the consequences not the homeowner.

No other person or entity in our state is given the awesome power of placing a non-consensual lien on peoples' real property except the IRS. A non-consensual lien is one where the property owner does not need to sign anything. Not bankers, not lawyers, not even the state of Montana can get such a lien. Only materialmen and suppliers of labor and goods to real property follow the Construction Lien law are permitted to file a lien against a man's house without his consent in writing. That power should be limited. The time limit should not be extended just because some materialmen or contractors cannot operate their business well enough to know within 20 days whether they need to serve a notice of lien on the homeowner.

I respectfully urge you not to jeopardize the gains achieved in the Construction Lien Law which has worked extremely well in its short life. I ask you not to throw Montana's homeowners back into the 19th century with the old secret lien. I ask you to kill this bill.

Thank you.

Sincerely,

JOHN R. GORDON

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB #252

DATE Jan. 29 SPONSOR(S) Rep. Forrester

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Riley Johnson	Western Building Material Assn	X	
George T. Bennett	Mont. Bankers Assn		X
Gene Phillips	Mont. Land Title Assoc.		Amend
Bob Pyfer	MT Cred. Unions League		X
Mike Waterbury	Norwest Bank + MBA		X
Bill Leary	Mt. Bankers Assoc.		X
Frankie Bennett	Self		X
James D. Bennett	First Citizens Bank Billings		X
[illegible]	1st St Bk Miles		X
Jack Anderson	Mt. League of S+L		/
Joe Brown	First Bank & MBA		X
Paul E Thompe	Thompson Lumber YCA	X	
Don Chance	Mt. Building Industry Assn	X	
[illegible]	Valley Glass/FH Homebuilders	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB 252

DATE 1-29 SPONSOR(S) Rep. Forrester

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DAVID R. STEEN	STEEN BUILDERS AND GREAT FALLS HOME BUILDERS	X	
Mark Meek	Front Street Glass Helena Home Bilders	X	
Tom Sinkins	Sinkins - Hall - Lumber Co Bozeman.		
Jim Caras	Caras Cabinet Co. Missoula Homebuilders Asso	X	
Mark Lindsay	Lindsay Construction Helena Home Builders	X	
John Phelan	Helena Sand & Gravel Helena Home Builders & F.C.C.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

goes to 4 different places and the committee is going to have to go to those places and take out $40.

Motion: REP. BROOKE moved to amend HB 289 by putting the fee back to $100.

Discussion:

John MacMaster stated that the amendment the committee adopted did not return the fee back to $60, it took the new fee the bill creates and made the fee $60 instead of $100.

Motion/Vote: REP. BROWN MOVED HB 289 BE TABLED. Motion carried 13 to 7 with Rep's: Brooke, Clark, Johnson, Russell, Keller, Darko, Strizich and Nelson voting no.

EXECUTIVE ACTION ON HB 252

Motion: REP. MESSMORE MOVED HB 252 DO PASS.

Motion: REP. TOOLE moved to amend HB 252 by changing the 45 days to 35 days.

Discussion:

REP. TOOLE stated that during the hearing the proponents felt the 45 days was more efficient to work with. He stated that he disagreed with that and it shouldn't be more than 35 days.

REP.MEASURE stated that he didn't have any problem with the banks position to go ahead and kill the bill rather than leave it at 20 days. He stated that the main concern of the distributors is how they look in the eyes of the consumers. He felt the committee is not in the position to do their job for them. He stated that it has worked well for the last 2 years it has been in effect and it protects the homeowners.

REP. CLARK stated that he agrees with Rep. Measure.

Motion: REP. CLARK MADE A SUBSTITUTE MOTION to amend HB 252 to leave it at 30 days.

Discussion:

REP. BROWN stated that he is not inclined to go to 35 days, but he is willing to go with 30 because it seems a reasonable place to stop. He felt it wasn't an extraordinary change in existing law and does cause a few problems for people in that situation, but that it is better than 20 days.

REP. LEE stated that if the distributors feel there should be a change other than what was offered the committee should send this

back to them and they can come back with something more suitable.

Motion/Vote: REP. LEE MOVED HB 252 BE TABLED. Motion failed.

Vote: (Clark amendment) Motion carried 19 to 1 with Rep. Boharski voting no.

Motion/Vote: REP. WHALEN MOVED HB 252 DO PASS AS AMENDED. Motion carried 19 to 1 with Rep. Lee voting no.

EXECUTIVE ACTION ON HB 303

Motion: REP. BROOKE MOVED HB 303 DO PASS.

Motion: REP. WHALEN MADE A SUBSTITUTE MOTION OF DO NOT PASS.

Discussion:

REP. WHALEN stated that all the liability bills are presented from the view point that if the committee doesn't make them immune from the suit, people will be afraid to do their jobs.

REP. TOOLE stated that a person should not engage in an activity at all if he or she feels they need immunity protection. He stated that it isn't right to give them that protection.

REP. BROWN stated that he agrees, but that there is a difference between the large supplier and the small independent groups. He felt the problems stems from the smaller cooperatives not being able to have their people trained for all the equipment. He felt a company shouldn't be in business if they don't have the people to handle the work. He is concerned that none of the companies should be liable for a person on emergency communication.

Motion: REP. BROWN moved to amend HB 303 to strike page 1, line 25, sub 2, in its entirety and sub 3 in its entirety through page 2, line 13 with a period following result.

Discussion:

REP. KELLER stated there are some small communities that are still don't have 911 and this will keep them from getting it if the bill doesn't pass.

REP. DARKO stated that there aren't many liability suits brought against the telephone company. She stated that insurance is generally unavailable and that was one thing when people come in for immunity their insurance is too high and they cannot operate. She felt they are asking for immunity for something that hasn't happened and they can't buy insurance for it.

REP. WHALEN stated that he opposes the amendment because he is

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 252 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:
1. Title, line 5.
Strike: "45"
Insert: "30"

2. Page 2, line 6.
Page 4, line 23.
Strike: "45"
Insert: "30"

3. Page 2, line 10.
Page 5, line 1.
Strike: "45-day"
Insert: "30-day"

blanket prohibitions unnecessarily affect their legitimate uses. They support the bill with the amendments proposed by Representative Schye.

Leo Barry, representing MCI telecommunications, stated that they support the bill as amended.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Gage asked if there was a definition of "person" in title forty five chapter eight.

Representative Schye replied that there is not a definition.

Senator Gage asked if imprisonment of up to six months is a viable fine for a violation of this nature.

Representative Schye replied that the thing that they are trying to get at are the recorded phone calls.

Senator Williams asked if there was any history in any state of them tracking somebody down that has been guilty of this.

Representative Schye replied that most of the legislation that is being talked about is fairly new legislation. It would be fairly hard to track those people, but it would get a message out to the one's that are doing it illegally that it is not required.

Senator Lynch stated that he feels that they should strike that section.

Representative Schye replied that a lot of the telemarketers are not from in state. If it came out across the codes that Montana made this a law, it would let a lot of them know that the law is there and that it is illegal to use the recorded message without a live voice.

Senator Hager asked if you hang up on a computerized call, does it disconnect.

Representative Schye replied if you hang up on a computerized call, it will hang up rather quickly.

Senator Hager stated that he was concerned about the people who have car phones. They pay a lot of money to have people call them up.

Dan Walker stated that the call should time out from six to twenty seconds.

Closing by Sponsor:

Representative Schye closed.

HEARING ON HOUSE BILL 252

Presentation and Opening Statement by Sponsor:

Representative Gary Forrester, sponsor of the bill, stated

that this bill provides an extension of the time for notice of intent to file a lien. The lien laws were rewritten in 1987, and that is where this provision was added to the law. The law now provides that a subcontractor must provide a notice of intent to lien, and has to be filed within twenty days after the first work or materials were furnished on the job. In Montana, most deals that have to do with construction are sealed with a handshake. When a notice of intent of lien is filed with a homeowner, the first thing they see is a registered letter informing the homeowner that this particular subcontractor intends to file a lien on their house. This is the notice that they are required to give. Most of the homeowners deal with a general contractor that they pay at the first of the month following date of billing. The forty five days would give the contractors thirty days for the normal contract to run out to the billing date. The first of the month, and the tenth of the month would be the payment date. If payment was not received by that time, they would have five days to file a notice of intent on lien. They want a normal billing period.

Proponents' Testimony:

Riley Johnson, representing the Western building material association, spoke in favor of the bill (See Exhibit 1, Exhibit 1A, Exhibit 1B, Exhibit 1C, Exhibit 1D).

Don Chance, speaking on behalf of the Montana building industry association, stated that this bill started out as a good bill in the house, and through amendments on the house floor, it is now a great bill. It solves a number of major problems and expensive headaches for the industry, and for the consumers. It does not jeopardize the protection of the consumer. That is what these provisions are all about. The problems center around the standard billing cycle. You have to file within twenty days to maintain your right of lien. If they file on every sale and every service that they provide in the construction business, they would essentially bring the whole closing system on house sales down. The system that is currently in place is an expense to the industry and to the consumer.

Bob Ross, representing the Flathead valley homebuilders association, stated that the Flathead valley has forty five percent of the housing starts in the state of Montana. This is a real problem for suppliers and subcontractors. It is a problem for the suppliers, because it reflects directly on their creditability with their clients when they receive a notice of intent of lien of property. He supports all of the testimony, and feels that the consumer is protected under this legislation. The small businessman and the contractor benefit greatly from this legislation.

Jim Caras, representing the Missoula homebuilder's association, stated that the billing cycle problem could be resolved by going to the forty five days.

David Curd, representing the Helena homebuilder's association, stated that he agrees with the previous testimony by the other proponents. By approving and passing this bill the

committee would be doing a great favor, and further improving our construction industry.

David Steen, owner and operator of Steen builders property improvements company in Great Falls and the vice president of the Great Falls homebuilder's association, stated that on behalf of himself and the association they support this legislation.

Opponents' Testimony:

George Bennett, representing the Montana banker's association, stated that this bill has a long history, it goes back to 1985. Senator Hager and Senator Thayer worked long and hard with an interim committee to study the lien situation in Montana. The compromise that came out of that was that the legislation was passed in 1987. Senator Gage was co-sponsor of that legislation. It is a good law, and it has been working. What the building materialman are saying now, is that they want to break the covenant they made with the legislature and the public. What they have is a non consensual, secret lien. It used to be secret for ninety days, and nobody knew who supplied these materials until ninety days had gone by if the filing was going to be made. It is the only lien where a person selling goods to have a lien on somebody else's property, where that property owner has not dealt contractually or otherwise, with that retailer.

Jock Anderson, representing the Montana league of savings institutions (MSLI), spoke in opposition of the bill (See Exhibit 2).

Bob Pyfer, vice president of the Montana credit unions league, stated because credit unions are non-stock, non-profit, member owned organizations, the only reason for them to exist is serving their members. One of the ways that credit unions do this these days is through home equity, home improvement loans. While these projects do tend to enhance the value of the property, for that reason the collateral is protected. If the member has to pay twice for the materials, it could put the member in financial difficulties. The financial well being of the member goes hand in hand with the financial well being of the credit union. The existing construction lien law is a good law. It is a disclosure law. It is a trade off with a hidden lien, which nobody else has, and a disclosure by the people who have the benefit of that lien to the person who could get burned, and that is the homeowner. Under the amendments put on by the house, that consumer could still get burned, or still have to pay twice. If it goes to foreclosure, the materialman would get paid first. If it goes to bankruptcy, they can walk away from a little more debt. The timeliness of this disclosure is crucial. If it doesn't arrive before the homeowner pays the contractor, then it is worthless. Twenty days is too long. To solve the problems with this bill we need uniform practices and education.

Brad Walterskirchen, with heritage bank in Great Falls, stated that during the past four years, the law has worked very well. It has provided all participants a set of rules to ensure

that they receive materials or money. If the material supplier gives notice, they get paid. If they give notice, and do not get paid, then they get a lien. It has eliminated the secret lien, and eliminated the consumer of paying twice. It has drastically reduced the disputes and the law suits that were encountered prior to the enactment of the law.

Joe Bauer, representing first bank Montana, stated that the proponents brought up that it saves them embarrassment, and it is a ridiculous process of putting a homeowner on notice. The intent of the law was to put the homeowner on notice. He wondered if the homeowner thinks it is ridiculous if it saves him from paying twice.

Bill Leary, representing Montana banker's association, spoke in opposition of the bill (See Exhibit 3).

Roger Tippy, representing Montana independent banker's association, stated that they are in concurrence with what has been stated by the other opponents.

Questions From Committee Members:

Senator Williams asked Bill Leary what the date of the newspaper article was.

Bill Leary replied that it was from some years ago, it was not recent.

Senator Gage pointed out an error on page two of the bill, where the time period is listed as twenty instead of thirty days. Also, on page two, sub four, forty five days should also be part of that notice. Shouldn't the new language on page two, where it has been extended to forty five days be also in that notice somewhere.

Representative Forrester replied that he thought it was adequate there, because we have involved the lenders.

Senator Thayer stated that there was nobody here today that testified on behalf of the people who sell these products to the contractors. How is the person that will be supplying these materials going to know whether this will be going on a job that will be paid for, directly by the homeowner, or if it will be paid for by filing. How will they obtain that information.

Joe Bauer stated that he doesn't know how the lumberyard would know.

Senator Williams asked what the vote for this bill was in the house.

Riley Johnson replied that the vote was 88-6.

Closing by Sponsor:

Representative Forrester closed by saying that people do not like to see the registered letter that tells them what is going on. They are mad, they made a deal with their contractor. To them it is no different than receiving a lien, and they now have to go see their attorney so that he can explain to them that the contract doesn't do anything wrong, they are just complying with the law. The law has been working. The consumer advocates

haven't brought in anyone who can say that the law isn't working. This bill, with the amendments, merely involves the consumer advocates. Keep in mind, we are talking about third party. If a dispute arises between a general contractor and a homeowner, the small business person has no recourse. That what this bill is about. This is something that is needed. It isn't going to hurt anyone except the consumer advocates. You are not protecting the consumer advocates, you are protecting mainstreet Montana.

EXECUTIVE ACTION ON HOUSE BILL 725

Motion:

Senator Noble moved that HB 725 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion that HB 725 be concurred in passed unanimously. Senator Williams will carry HB 725 to the floor.

EXECUTIVE ACTION ON HOUSE BILL 279

Motion:

Senator Williams moved to amend HB 279.

Senator Gage moved to amend HB 279 by striking the imprisonment and putting a fine at twenty five hundred dollars.

Senator Noble moved that HB 279 be concurred in as amended.

Discussion:

None

Amendments, Discussion, and Votes:

The motion made by Senator Williams to amend HB 279 passed unanimously.

Senator Gage stated that maybe they should strike the imprisonment part of the bill and maybe increasing the fine.

The motion made to amend HB 279 by striking the imprisonment and putting a fine at twenty five hundred dollars passed unanimously.

COMMITTEE ON BUSINESS & INDUSTRY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
GEORGE BENNETT	MONT. BANKERS ASSN	HB252		X
Bill LEARY	Mont. Bankers Assn	HB252		X
Riley Johnson	Western Building Material	HB252	X	
Bob Pyfer	MT Credit Unions League	HB252		X
Ross Carver	Retired Farmer	HB279	X with amendments	
Brad Walterskirchen	Heritage Bank FSB Gt. Falls	HB252		X
Gary Forsyth	HD #95	HB252	X	
Robert P. Bone	Flathead Home Builders	HB252	X	
David Hull	Montana Homebuilders	HB252	X	
Jim Caras	Missoula Homebuilders	HB252	X	
Lina T. Svendsky	MT Consumer Finance Assn	H725	X	
Dennis T. Green	MT. Consumer Finance Ass	H 725	X	
Roger Tippy	MT Independent Bankers	HB252		X
Cathy Brightwell	AT&T	HB279	X w/ amend	
Jan Wilkin	US WEST	HB279	X w/ amend	

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7th day of MARCH, 1991.

Name: GEORGE T. BENNETT

Address: P. O. Box 1705 HELENA 59624

Telephone Number: 442-3691

Representing whom?

MONTANA BANKERS ASSOCIATION

Appearing on which proposal?

H. B. 252

Do you: Support?____ Amend?____ Oppose? X

Comments:

See attached material

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE BUSINESS & ...
EXHIBIT NO. 1
DATE 3/7/91
BILL NO. HB 252

SUBMITTED STATEMENT OF

WESTERN BUILDING MATERIAL ASSOCIATION

Before: Senate Business & Industry

Sen. J.D. Lynch, Chairman

Subject: HB-252

Date: March 7, 1991

Presented By: J. Riley Johnson, Lobbyist

Mr. Chairman, members of the committee, I offer the following testimony on behalf of some 90 building material dealers in Montana who belong to the Western Building Material Association. Our members support HB-252.

As I look over the committee this morning, I realize there are some here unfamiliar with the construction lien law. To most the lien law is merely 71-3-531 and 71-3-532 MCA. But to me the lien law is a labor of love. Permit me to provide you with a little history on one of the most unusual bills ever passed in the 1980s in the Montana Legislature.

It began in 1985 when several legislators, the banking community and consumer advocates brought before the lawmakers a problem that was called "the hidden lien". Consumers, unaware of the construction lien laws dating back to the 1880s, paid for construction jobs on their homes only to have subcontractors and suppliers file liens against their property for bills unpaid by their contractors. These "hidden liens" could pop up months

interests got together and solve their own problems, the construction lien law as you know it today sailed through both houses of the 1987 Legislature almost unanimously.

And, now, for four years the construction lien law has been at work in Montana. Indeed, it is a political compromise. But it is one political compromise that has worked well. Hidden liens against consumers have all but been eliminated.

Truly, the authors of that very lien law are before you again this morning. We come before you not to overhaul a very workable construction lien law. We come before you to fine-tune a very workable construction lien law. And, we believe, it is a fine-tuning any one of you who have ever paid a bill at the end of the month or issued a monthly statement will understand.

If you think about it, the problem is obvious. The law now states that any contractor or supplier has 20 days in which to file a notice of the right to file a lien, or that contractor or supplier must give up the right to file a lien...forever! Keep in mind, this is merely a notice <u>of the right to file a lien</u>. It is <u>NOT</u> a lien! But you, a good, prompt bill-paying consumer, must get this notice of the right to file a lien against your house before your contractor has even had 30 days to pay his/her bills. What runs through your mind? Something is wrong with your contractor, isn't there? He doesn't pay his or her bills, right? What about the suppliers to contractors who don't want to be viewed as "slip-shod" and "irresponsible"? Contractors won't do business with them.

This truly is now a bill of both consumer protection and help to struggling contractors, lumber yards and subcontractors. Rep. Mercer's colleagues in the House agreed. HB-252 passed the House on February 9 with a resounding 88-6 favorable vote.

This morning, you too have the opportunity to strike a significant blow for both the consumer and the small business person in Montana. You can vote a "do pass" on HB-252.

As you know, any major rewrite of law needs time to work out glitches or to have any imperfections rise to the surface. Then, it is customary for lawmakers to fine-tune the law and make it work better for the people of Montana.

That is what we are asking for you to do today. Speaking for the construction industry, we gave up much with this new construction lien law...but we also gained much. A problem within our state was solved and our industry worked hard and willingly to help craft that solution.

But we suggest that a "do pass" from this committee on HB-252 will help us all to fine-tune the solution...<u>because it is fair</u>!

-30-

TRIPLE 'S' BUILDING CENTER, INC.

100 E. FRONT STREET
P. O. BOX 3764
BUTTE, MT 59702

HOW-TO STORE

The Stordahls

(406) 723-6567 PHONE
(406) 723-7304 FAX
(800) 823-8777 IN STATE WATS

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 14
DATE 3/7/91
BILL NO. HB 252

March 5, 1991

Senator J.D. Lynch
Chairman of Business & Industry Committee

Dear Mr. Chairman:

Please support House Bill #252. This bill will take some of the pressure off us in having to file a "Notice of Intent to File a Lien" on contractors that DO pay their bill every thirty days. This bill will reduce the time spent, both by us at the courthouse, by not having to file these notices on reputable contractors and/or subcontractors.

My understanding is the "little old lady" consumer is still protected from the "big bad wolf, the poor retailer, and the unscrupulous contractor" under House Bill #252.

I hope you see the humor in that last statement and please support House Bill #252.

Thank you,

Milo L. Stordahl
President

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 13
DATE 3/7/91
BILL NO. HB252

Thomae Lumber Sales

501 East Main
Laurel, Montana 59044

Mary 5, 1991

Chet Blaylock
Helena, Mt.

Dear Chet:

Since we were not able to make phone connections previously, I am sending this letter to you to ask you to vote for House Bill 252.

As a small, independent lumber yard I support this bill. The extra days allowed by the bill, will benefit the supplier, the contractor and not jepardize the home owner.

I can state that I have lost business due to the way the right to claim a lein law is now written. As a small business, I cannot afford to lose business or gamble by not sending lein protectors.

Chet, if you have any questions or comments, please call me at 628-8224.

Thank you,

Paul Thomae

Poulsen's GREAT FALLS' ORIGINAL HOME CENTER

March 5, 1991

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 11
DATE 3/7/91
BILL NO. HB252

Senator J. D. Lynch
Chairman-Business and Industry Commitee

Dear Senator Lynch,

To reduce the amount of paperwork necessary to protect our mechanics lien rights I urge you to support HB252.

Thanks,

Jake Tuck
General Manager

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 3/7/91
BILL NO. HB252

HB 252

Extending time to give notice of right to file lien

From : Montana League of Savings Institutions (MLSI)

Lobbyist : Jock Anderson 442-8560

Position: Opposed

Date : March 7, 1991

The MLSI requests you vote No on HB 252.

WHAT IS A CONSTRUCTION LIEN?

Generally, any person who supplies labor or materials to improve real estate has a right to file a lien against that property if he is not paid.

WHY ARE CONSTRUCTION LIENS UNIQUE?

Most importantly, construction liens are unusual because they may be imposed against a homeowner's property even though that homeowner has paid every dime he owes to the person to whom he owes that money. This occurs when a homeowner contracts with a general contractor to improve property and that general contractor in turn hires subcontractors to perform parts of the project. If the general contractor does not pay his subcontractors they may impose the lien even though the homeowner has paid the general contractor as agreed. Then the homeowner often has to pay again to avoid having the lien foreclosed and his property sold to satisfy the debt to the subcontractors. Because the homeowner has never made any promise to pay these subcontractors and often doesn't even know they worked on the project, the liens have often been referred to as "hidden" or "secret" liens.

WHAT PROTECTION DOES THE HOMEOWNER HAVE?

The problem of hidden liens was so substantial that in 1985 the Legislature authorized an interim study of the subject. All segments of the industry were represented and the present law was the compromise reached and enacted into law in 1987.

The centerpiece of that compromise was the requirement that persons furnishing services or materials to a project must notify the owner to preserve their lien rights (Notice is attached hereto). The notice serves two important purposes: First, it identifies the persons who need to be paid and second, it gives explicit instructions as to how the homeowners can protect themselves. Specifically, for example, it explains to the homeowner that he

has the right to make payment jointly to the general contractor and the subcontractors thus insuring the subcontractors get paid.

The key point to remember is that the notice loses its purpose unless the homeowner receives it before he releases all the funds to the general contractor.

IS NOTICE ALWAYS REQUIRED?

No. There are major exceptions to the requirement to give the notice. Hourly wage earners don't have to give the notice at all. Neither is the notice required on commercial projects or multifamily housing projects or when the services are being supplied directly to the owner.

WHAT IS THE EFFECT OF LENGTHENING THE TIME TO GIVE NOTICE?

This is best explained by example. Suppose you hire a contractor to remodel your kitchen with payment due upon completion in 30 days. On day 1 the contractor purchases the materials and on day 5 the plumber and electrician arrive. The project is completed on schedule.

Under current law (20 days) the homeowner received his notice before the contractor is paid and therefore is in a position to protect himself. Under HB 252 the notice doesn't have to be sent in some circumstances for 45 days which can be after the general contractor is paid. Why require the notice at all if you allow it to be sent when it's too late to serve its purpose?

WHAT ARGUMENTS ARE ADVANCED TO SUPPORT THIS BILL?

The following were the arguments advanced in the House and a response.

1. By extending the time we can wait to see if there is a problem before we send a notice: The proponents are missing the point. The purpose of the notice is to prevent a problem by allowing homeowners (or lenders) to protect themselves. After the problem arises and all the money is paid it is worthless.

2. The notice is expensive and bothersome. It is not expensive (postage and filing fee) and it is essentially the same expense that every other creditor expends to perfect its liens. Whatever bother is involved pales in comparison to the problems which arose in prior times of hidden liens.

3. Customers get concerned when they receive the notice: They should get concerned. The whole purpose is to encourage homeowners to protect themselves. You don't do homeowners any favors by leaving them in the dark until after the problem exists.

4. The notice makes it appear the general contractor isn't creditworthy: This is a simple matter of education. Contractors

should tell their customers there will be subcontractors on the project and they can expect a notice of lien rights which is required by law. Anyway, how about the homeowner who has paid his debt and still ends up in the credit bureau report under construction liens appearing to all the world like a dead beat? Which is the greater injustice?

5. This bill is just a minor modification of an already good idea: Not true. The time element is not a matter of degrees. The value of the notice is that it be received before the funds are released to the general contractor. When the notice is delayed until after that time it serves no purpose. This bill guts the purpose of the notice. This Legislature has to decide whether or not it is going to protect homeowners. It can't provide for the notice on the one hand and allow it to be sent after it is worthless on the other. There simply is no middle ground. Twenty days is plenty of time to do the minimal paper work required.

WHY ARE LENDERS CONCERNED ABOUT THIS BILL?

Most improvement projects are financed by lenders. In 1987 the Legislature provided that when a project was financed by a lender any construction lien would be prior to the mortgage of the lender even though that mortgage might be prior in time (Section 71-3-542). The assumption was that lenders were knowledgeable and could protect themselves and the homeowner from these liens by doing the things the notice suggests. If lenders failed that duty they deserved to be subordinate to the lien. Therefore this bill creates the same problem for lenders as it does for the homeowner. Lenders rely on that notice to be sure potential lienors are paid. If we don't know who is out there we can't protect the homeowner and ourselves.

DOESN'T THE COMPROMISE BILL PASSED BY THE HOUSE SATISFY ALL CONCERNS?

No. The original bill was to extend the period from 20 days to 45 days. The amended version which passed the House sets up a two-tier system--20 days when the homeowner finances the project and 45 days when a "regulated lender" finances the improvement.

First, it is difficult to see how a supplier will know how the project is funded. Liens will rise or fall on the vagrancies of how a project is funded. And what is the result when a project is funded in part by the homeowner and part by borrowing? Further, note that the 45-day period only applies when the lender takes a security interest in the improvement to secure the loan. Some remodel projects are funded by lenders without a mortgage on the improvement. Is the homeowner expected to understand that his notice protection will vary depending on whether a security interest is given? The point is the proposed two-tier system is seriously flawed in principle and will lead to misunderstanding and confusion.

Second, there is no logical reason to differentiate based on the source of funds. If the theory behind giving the notice is sound (and it is), there is no logical reason to single out "regulated lenders" for disparate treatment. If lenders are expected to protect against liens when they fund a project then they deserve to have access to the information needed to provide that protection.

Third, the premise of the compromise bill seems to be that lenders will bear the cost if hidden liens appear. That is not true. In almost all cases it will ultimately be the homeowner who must pay these hidden liens.

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(3) The notice must contain the following information and be in substantially the following form:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To: ..... Date of mailing: .....
(Owner)

.....
(Owner's address)

This is to inform you that ..... has begun to provide ..... (description of services or materials) ordered by ..... for improvements to property you own. The property is located at .....

A lien may be claimed for all services and materials furnished to you, if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given.

Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid. THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

This notice has been sent to you by:

NAME:..... IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, PLEASE CALL US
ADDRESS:.....
TELEPHONE: .....

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

— RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

— LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

— WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to lien.

— OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to lien have been paid or have waived the right to claim a lien against your property.

— CONSULT an attorney, a professional escrow company, or your mortgage lender.

History: En. Sec. 8, Ch. 202, L. 1987.

71-3-533. Notice of completion. (1) The contracting owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The following acts or events constitute completion of any work or improvement for the purpose of filing a notice of completion:

(a) the written acceptance by the contracting owner, his agent, or representative of the building, improvement, or structure. The filing of a notice of completion shall not be considered as an acceptance of the building, improvement, or other structure.

(b) the cessation from labor for 30 days upon any building, improvement, or structure, or the alteration, addition to, or repair thereof.

(3) The notice of completion together with an affidavit of publication as hereinafter required shall be filed in the office of the county clerk and recorder of the county where the property is situated and the notice shall set forth:

(a) the date when the work or improvement was completed or the date on which cessation from labor occurred first and the period of its duration;

(b) the contracting owner's name and address and the nature of the title, if any, of the person signing the notice;

(c) a description of the property sufficient for identification;

(d) the name of the contractor, if any.

(4) The notice shall be verified by the contracting owner or his agent.

(5) A copy of the notice of completion shall be published once each week for 3 successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

(6) The contracting owner shall give a copy of the notice of completion to any person who has given the contracting owner a notice of a right to claim a lien.

History: (1), (3) thru (5) En. Sec. 3, Ch. 408, L. 1971; Sec. 45-502.1, R.C.M. 1947; (2) En. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; En. Sec. 1, p. 162, L. 1901; re-en. Sec. 729, Rev. C. 1907; re-en. Sec. 8340, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1187; re-en. Sec. 83, R.C.M. 1935; amd. Sec. 2, Ch. 408, L. 1971; Sec. 45-502, R.C.M. 1947; R.C.M. 1947, 45-502, 45-502.1; amd. Sec. 13, Ch. 202, L. 1987; Sec. 71-3-512, MCA 1985; redes. 71-3-533 by Code Commissioner, 1987.

71-3-534. Filing with county clerk — notification of owner. The county clerk must endorse upon every lien the day of its filing and enter an abstract thereof in a book by him to be kept for that purpose and enter

EXHIBIT NO. 3
DATE 3/7/91
BILL NO. HB 252

HOUSE BILL 252

CONSTRUCTION LIEN LAW

By

Montana Bankers Association

The old mechanics lien law was in a mess and had not been changed for 100 years. A group of local bankers, builders, attorneys, and legislators in Kalispell met in the fall of 1984 and approved the uniform law on construction liens. In the 1985 Legislature, this became SB 128 sponsored by Senators Himsl, Mazurek, Blaylock and Crippen.

The home builders and building material dealers killed the bill because it took away their 90 day secret lien and made many other improvements to the law.

The 1985 Legislature passed a resolution creating a Joint Interim Subcommittee on Lien Laws, Chaired by Senator Halligan and Vice Chair Rep. Mercer. Other committee members were: Senators Mager, Christiens, Thayer, and Reps. Ellerd, Bachini, and Krueger.

At the first Subcommittee meeting, we recommended no secret lien and adoption of the Uniform Code Commissioner's Act. Riley Johnson, lobbyist for a coalition of builders and suppliers, said the UCC was too confusing and proposed a notification process. Subsequently Senator Halligan, and 2 members of the Subcommittee, drafted some "Discussion Recommendations" in which a 10 day notice was proposed.

At the third meeting of the Interim Committee on February 7, 1986, Riley Johnson, lobbying for the home builders, requested time

to give notice of a lien be increased from 10 days to 20 days. It was approved over our objections.

After 7 meetings over 2 years, a modified uniform code was approved. Everyone agreed to the compromise and SB 20 was introduced in 1987 by Senators Halligan, Thayer, Boylen, Gage and Reps. Poulson, Mercer, Hager, Rasmussen, Wallin, and D. Brown.

During the 1987 session, without prior warning, the home builders and building material dealers proposed an amendment to the bill to extend their filing time by another 5 business days. With weekends, builders and suppliers would then have almost a 30 day secret lien. We supported a 15 day notice to the homeowner and an additional 5 days to file with the county, to no avail. The bill passed in the 1987 Legislature with the 5 additional days.

This law has worked extremely well since 1987. To our knowledge no homeowner has been forced to pay twice for any home improvements. Prior to 1987, Legislators were coming to the session complaining about their constituents who were forced to pay twice because either the subcontractor did not get paid by the contractor or the building material dealer did not get paid by the contractor. You may recall the Sherlock Homes Development in Great Falls in 1981 where over 7 homeowners were placed in double jeopardy because subcontractors were not paid. There were also 20 homes in the Sun Prairie Village Development subject to secret liens. Since 1987 all homeowners have been protected.

There is also protection for the contractors and suppliers because they still have a secret lien. The homeowner can still be forced to pay twice if a notice of lien is given to that homeowner

within 20 days. Obviously builders and suppliers do not want to go through the paperwork of providing notices like all banks have to do to protect themselves. If they do not wish to do the paper work, they are putting themselves at risk and justifiably so. They are the ones that are making money off home improvements. Why should the homeowner guarantee the accounts receivable of a building material dealer or the repair costs of a subcontractor?

Why should anyone have to pay twice for a home improvement job? Please kill HB 252.

Lee Times

Legal battles over unpaid bills leave some homeowners bitter

By RICHARD ECKE
Tribune Staff Writer

Some 21 months ago, Carol White stood outside her split-level house preparing to go to town, just as a man she didn't recognize drove up in a car.

First in a series

"Are you Carol White?" he asked politely.

"Yes," she said.

The man, a Cascade County sheriff's deputy, handed her legal documents telling the Whites they were being sued in district court. With that brief event, a year of frustration, anger and confusion began.

JOHN AND CAROL WHITE were among at least seven homeowners in the Sherlock Homes development who faced possible legal action because firms who provided plumbing, heating, landscaping and other services weren't paid for their work. Although they believe it wasn't their fault, the Whites and other homeowners appeared to be legally responsible for paying the debts.

As the Whites quickly discovered, owners of new homes occasionally face the rude prospect of paying for parts of their house twice over — a kind of homeowner's double jeopardy.

Despite title insurance, which some may view as protection against liens, suppliers can still often file liens — legal claims against property — and move to enforce them in court. Then comes a legal roulette, as the players in the drama often fight it out in the courts to see who wins and who loses.

Persons living in Sun Prairie Village west of Great Falls are not the only homeowners to have recently felt the sting of liens — a legal term pronounced LEANS. Mechanic's liens are designed to protect the commercial interests of plumbers, carpenters and others who provide work or materials at a home and then are not paid.

In addition to the lien filings in Sun Prairie Village, nearly 20 homes in the Westwood development east of C.M. Russell High School were targets of liens after the builder went bankrupt.

For the Whites, the discovery that they were being sued was a stunning surprise.

NESTLED into their four-bedroom home with a 12-year-old daughter, two dogs and three cats, the Whites were feeling comfortable.

"It's more like living in the country here," Mrs. White says. There is less traffic, too, than in the city. From their sun deck, acres of rich farmland stretch out from beyond a row of trees marking their backyard.

Considering rising housing costs in Great Falls at the time, they also felt they got a good price at $45,000. It was their first new home.

Then the bubble burst. They were being sued, with their real and white home in the balance.

"They (the firms suing) wanted our house sold, yes, sold at sheriff's auction," a stunned Mrs. White says now. Such sales are statutory procedure in lien cases.

As reality sunk in, the Whites say they visited with the president of the credit union where they secured a loan. They were told the $5,000 in liens could be added to their home loan, although White declined the offer.

WHITE SAYS he later called Ray Wirth, president of Great Falls Federal Savings & Loan, the institution which provided most of the construction money for Sherlock Homes. The company is suing in court for ownership of seven unsold houses in Sherlock Homes.

White says Wirth told him in a telephone conversation that the liens were White's personal problem.

(Wirth, through attorney Charles Lovell, declined comment because of pending lawsuits.)

In the meantime, the Whites retained a lawyer.

As the months passed, White says few of the neighbors talked about the legal tangles. In bitterness, White put the house up for sale, although it didn't sell.

When their case came to court, the Whites' lawyer succeeded in getting the liens dismissed. The plumbing firm which filed the liens named the wrong owner of the property. Instead of naming the Whites as owners, they named the builder, McCann Enterprises, and the development, Sherlock Homes. The liens, and others against their property, were dismissed last February.

Carol White says the news from court left her "relieved." Her husband says he was "disgusted" despite the ruling.

"I DON'T REALLY think I cared one way or another," he says.

Through it all, the Whites failed to understand how they could be held responsible for the unpaid bills. White says he would never have paid the liens even if the courts had ruled against him.

"I would have dumped the house," he says. "I made up my mind I wouldn't have paid someone else's bill."

In any event, the Whites concede they were fortunate.

"We lucked out," White says. "We won." Cases are still pending against four of the Whites' neighbors who are being sued as the result of lien filings.

If the pressures of the Whites have subsided somewhat with time and their court victory, tempers are still flaring in Westwood among some homeowners, who faced thousands of dollars worth of liens after the builder went bankrupt. Westwood is located east of C.M. Russell High School.

"I'll never buy a new home again," vows Darrell Garneau, a Rice Motors employee who bought his first new home in Westwood.

"I TELL YOU, I got educated," he says.

Garneau says he bought the $48,000 house and paid almost 50 percent down.

"We like the house," he says of his Westwood home. "Everything was just kind of halfway neat until this thing hit me in the face."

Garneau says he was "pretty wild" when he first heard from his neighbors about the liens.

"Now I've kind of mellowed out," he says.

The neighbors who first broke the bad news of the liens to the Garneaus are insurance agent Michael Depner and his wife Barbara.

"It's really a ripoff from the word go," Depner says angrily.

"We've got (liens) and everyone on our block that I know of has them," Depner says.

AT LEAST 18 HOMES were the targets of liens in Westwood, compared to 14 in the Sun Prairie Village development of Sherlock Homes. Seven homes in Sherlock Homes remain unoccupied, however.

In contrast with the Sherlock Homes mess, which is still bogged down as the lenders, real estate brokers and builder fight it out bitterly in court, the Westwood tale was short if not sweet.

Toward the close of the Westwood project, Alta Construction Co. simply went bankrupt. Its president, Hans A. Fedge, was the builder in the Westwood project. (Fedge and Dr. William G. Shull, developer of the project, were not available for comment.)

When the case came up for hearing in federal bankruptcy court, Garneau says he attended. He says the homeowners received nothing.

"I never got a nickel," he says.

For a Vietnamese refugee family which lived near Garneau, the liens became a dilemma when the family decided to move to California. To sell their home at 124 17th Ave. NW in Westwood, Mein Hong Nguyen and his family was forced to pay off about $700 in liens, a neighbor says.

Garneau remains defiant, saying he won't pay the liens. He theorizes the house probably can't be repossessed for more than the $680 he has in liens.

HE ALSO SAYS he doesn't feel he has received any help from his lender and title company.

"I think they should have defended me," he says.

The whole affair has left Garneau and others thoroughly bemused.

"It's just like me taking $200 from you and giving it to somebody else and saying, 'Well, too bad,'" Garneau says.

"The little guy stands here wondering why."

Next: The building suppliers tell their story.

EDITOR'S NOTE: Circumstances detailed in the following series of articles, compiled over the past year, are not totally unique although the number of people, properties and complexities involved are more numerous than the usual case. Many homeowners over the years have learned the bitter truth that their property may be subject to a lien for debts incurred by contractors or prior owners for materials and/or services. The series should alert homeowners, potential homeowners and people in the home building or home services industry of the possible pitfalls and the need for written assurance that all bills and obligations have been paid.

Representative John Scott closed by saying that the reason that a brewer goes through a distributor is because part of the service that the distributor offers is he gets out and markets the product, he keeps the product rotated out, he keeps the area in the stores where the product is being sold clean. He doesn't think that there is a threat of a brewery in Massachusetts setting up a warehouse in Montana, it would be good for Montana, because they would have to man that warehouse. This bill is for the Montana micro brewers.

EXECUTIVE ACTION ON HOUSE BILL 698

Motion:

Senator Noble moved to amend HB 698 with the amendments proposed by Roger Tippy.

Senator Kennedy moved to amend HB 698 with the amendments proposed by Mark Staples.

Senator Noble moved HB 698 be concurred in as amended.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made by Senator Noble to amend HB 698 passed unanimously.

The motion made by Senator Kennedy to amend HB 698 passed 8 to 1 vote.

The motion made by Senator Noble that HB 698 be concurred in as amended passed unanimously. Senator Williams will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 252

Motion:

Senator Gage moved to amend HB 252 with some technical amendments prepared by Bart Campbell.

Senator Thayer moved to amend HB 252 by changing the forty five days to thirty days on the bank portion of the bill.

Senator Thayer moved to amend HB 252 on the right to claim the lien from twenty to ten days.

Senator Gage moved to amend HB 252 on page three, line five, by inserting a section that when a notice is delivered there must

be a written acknowledgement obtained by the owner.
Senator Williams moved HB 252 be concurred in as amended.

Discussion:

None

Amendments, Discussion, and Votes:

Senator Thayer stated that thirty days is a lot more palatable than forty days.
Senator Lynch stated that he would oppose the amendments moved by Senator Thayer because he has received many letters from the people in Butte that the forty five fits in much better with them than the thirty days.
Senator Gage stated that he would also oppose those amendments moved by Senator Thayer. It doesn't give them the billing cycle that they were looking for in the forty five days.

The motion made by Senator Gage to amend HB 252 with some technical amendments passed unanimously.

The motion made by Senator Thayer to amend HB 252 by changing the forty five days to thirty days on the bank portion of the bill failed 6 to 3 votes.

Senator Thayer stated that the reason that he would like to change the twenty days to ten days for the right to claim a lien is that he served on that committee, and although it was testified that twenty days was working, there was testimony during the original hearing that stated that there were still situations were that may not be tight enough.

The motion to amend HB 252 made by Senator Thayer to change the twenty days to ten days for the right to claim a lien failed 5 to 4 vote.

The motion to amend HB 252 made by Senator Gage that a written acknowledgement must be obtained by the owner when a notice is given passed unanimously.

Recommendation and Vote:

The motion made by Senator Williams that HB 252 be concurred in passed 5 to 4 vote.

EXECUTIVE ACTION ON HOUSE BILL 719

Motion:

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/21/91 Bill No. HB252 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON
Secretary

J.D. LYNCH
Chairman

Motion: TECHNICAL AMENDMENTS

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/21/91 Bill No. HB 252 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS		X
SENATOR THAYER	X	
SENATOR NOBLE		X
SENATOR HAGER	X	
SENATOR GAGE		X
SENATOR FRANKLIN		X
SENATOR BRUSKI		X
SENATOR KENNEDY	X	
SENATOR LYNCH		X

DARA ANDERSON
Secretary

J.D. LYNCH
Chairman

Motion: AMENDMTS — CHANGING 45 to 30 DAYS —

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/21/91 Bill No. HB252 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS		X
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN		X
SENATOR BRUSKI		X
SENATOR KENNEDY		X
SENATOR LYNCH		X

DARA ANDERSON
Secretary

J.D. LYNCH
Chairman

Motion: AMENDMTS - 20 to 10 DAYS

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/21/91 Bill No. HB252 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON
Secretary

J.D. LYNCH
Chairman

Motion: AMENDMT- SUB 5, PAGE 3.

Amendments to House Bill No. 252
Third Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
March 8, 1991

1. Title, line 6.
Strike: "20"
Insert: "45"

2. Title, line 7.
Following: "LIEN"
Insert: "TO A REGULATED LENDER PROVIDING FUNDS FOR SERVICES OR MATERIALS"

3. Page 3, line 5.
Following: "mailed."
Insert: "If the notice is delivered, written acknowledgement of receipt must be obtained from the owner. A person may not claim a construction lien unless he has complied with this subsection."

4. Page 5, line 13.
Strike: "30"
Insert: "20"

5. Page 5, line 17.
Strike: "30-DAY"
Insert: "20-day"

6. Page 5, line 17.
Following: "given."
Insert: "However, if a regulated lender has provided the funds for the services or materials described in this notice, the notice may be given 45 days after the date the services or materials are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 45-day period before the date the notice is given."

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/21/91 Bill No. HB352 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER		X
SENATOR NOBLE		X
SENATOR HAGER		X
SENATOR GAGE		X
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON
Secretary

J.D. LYNCH
Chairman

Motion: CONCURRED IN AS AMENDED

SN WILLIAMS TO CARRY

SENATE STANDING COMMITTEE REPORT

March 21, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 252 (third reading copy, as amended -- blue), respectfully report that House Bill No. 252 be amended and as so amended be concurred in:

1. Title, line 6.
Strike: "20"
Insert: "45"

2. Title, line 7.
Following: "LIEN"
Insert: "TO A REGULATED LENDER PROVIDING FUNDS FOR SERVICES OR MATERIALS"

3. Page 3, line 5.
Following: "mailed."
Insert: "If the notice is delivered, written acknowledgement of receipt must be obtained from the owner. A person may not claim a construction lien unless he has complied with this subsection."

4. Page 5, line 13.
Strike: "30"
Insert: "20"

5. Page 5, line 17.
Strike: "30-DAY"
Insert: "20-day"

6. Page 5, line 17.
Following: "given."
Insert: "However, if a regulated lender has provided the funds for the services or materials described in this notice, the notice may be given 45 days after the date the services or materials are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 45-day period before the date the notice is given."

Signed: J. Lynch
John "J.D." Lynch, Chairman

KH 3-21-91
Amd. Coord.

3-21-91 2:25
Sec. of Senate